

1 SENATE BILL NO. 33

2 INTRODUCED BY HALLIGAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE ISSUANCE OF A TEMPORARY FAMILY
5 SUPPORT ORDER TO ENSURE THE PAYMENT OF PERIODIC MARITAL ESTATE LIABILITIES OUT OF THE
6 PARTIES' INCOME OR MARITAL ASSETS DURING THE PENDENCY OF MARRIAGE DISSOLUTION
7 PROCEEDINGS; AND AMENDING SECTION 40-4-121, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 40-4-121, MCA, is amended to read:

12 **"40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of
13 marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support
14 following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse,
15 either party may move for temporary maintenance ~~or~~, temporary support of a child of the marriage entitled
16 to support, or a temporary family support order. The motion must be accompanied by an affidavit setting
17 forth the factual basis for the motion ~~and~~, the amounts requested, a list of marital estate liabilities, a
18 statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the
19 case of a motion for a temporary family support order, a proposal designating the party responsible for
20 paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct
21 one or both parties to pay, out of certain income sources, liabilities of the marital estate during the
22 pendency of the action, including maintenance liabilities for a party or support of a child of the marriage
23 entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the
24 temporary family support order may direct that certain liabilities be paid from assets of the marital estate.
25 At any time during the proceedings, the court may order any temporary family support payments to be
26 designated as temporary maintenance, temporary child support, or partial property distribution, retroactive
27 to the date of the motion for a temporary family support order.

28 (2) As a part of a motion for temporary maintenance ~~or~~, temporary support of a child, or a
29 temporary family support order or by independent motion accompanied by affidavit, either party may
30 request the court to issue a temporary injunction for any of the following relief:

1 (a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of
2 any property, except in the usual course of business or for the necessities of life, and, if so restrained,
3 requiring the person to notify the moving party of any proposed extraordinary expenditures made after the
4 order is issued;

5 (b) enjoining a party from molesting or disturbing the peace of the other party or of any family
6 member or from stalking, as defined in 45-5-220;

7 (c) excluding a party from the family home or from the home of the other party upon a showing
8 that physical or emotional harm would otherwise result;

9 (d) enjoining a party from removing a child from the jurisdiction of the court;

10 (e) ordering a party to complete counseling, including alcohol or chemical dependency counseling
11 or treatment;

12 (f) providing other injunctive relief proper in the circumstances; and

13 (g) providing additional relief available under Title 40, chapter 15.

14 (3) A person may seek the relief provided for in subsection (2) without filing a petition under this
15 part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title
16 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period
17 of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and
18 40-4-208, as appropriate.

19 (4) The court may issue a temporary restraining order for a period not to exceed 20 days without
20 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that
21 irreparable injury will result to the moving party if ~~no~~ an order is not issued until the time for responding
22 has elapsed.

23 (5) A response may be filed within 20 days after service of notice of motion or at the time specified
24 in the temporary restraining order.

25 (6) At the time of the hearing, the court shall determine whether good cause exists for the
26 injunction to continue for 1 year.

27 (7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court
28 may issue a temporary injunction and an order for temporary maintenance ~~or~~ temporary child support, or
29 temporary family support in amounts and on terms just and proper in the circumstance.

30 (8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

1 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or
2 modification of a final decree under 40-4-208;

3 (b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case
4 of a temporary family support order, upon entry of the decree of dissolution; and

5 (c) when issued under this section, must conspicuously bear the following: "Violation of this order
6 is a criminal offense under 45-5-220 or 45-5-626."

7 (9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence
8 must be withheld except by order of the court for good cause shown."

9 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0033, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing the issuance of a temporary family support order to ensure the payment of periodic marital estate liabilities out of the parties' income or marital assets during the pendency of marriage dissolution proceedings.

ASSUMPTIONS:

1. There is no impact on the Departments of Justice or Public Health and Human Services or on the Judiciary.

FISCAL IMPACT:

There is no fiscal impact to the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

This bill may increase expenditures at the county and/or the city-funded judiciary.

Dave Lewis 1-7-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Mike Halligan 1-9-97
MIKE HALLIGAN, PRIMARY SPONSOR DATE
Fiscal Note for SB0033, as introduced

APPROVED BY COM
ON JUDICIARY

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15 either party may move for temporary maintenance or, temporary support of a child of the marriage entitled
16 to support, or a temporary family support order. WHEN A PARTY IS RECEIVING PUBLIC ASSISTANCE,
17 AS DEFINED IN 40-5-201(12), FOR THE MINOR CHILDREN AT ISSUE OR WHEN A PARTY RECEIVES
18 PUBLIC ASSISTANCE DURING THE LIFE OF A TEMPORARY FAMILY SUPPORT ORDER, THE TEMPORARY
19 FAMILY SUPPORT ORDER MUST DESIGNATE SEPARATELY THE AMOUNTS OF TEMPORARY CHILD
20 SUPPORT AND TEMPORARY MAINTENANCE, IF ANY. THE TEMPORARY CHILD SUPPORT ORDER OR THE
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 5 THE COURT HAS ISSUED A TEMPORARY FAMILY SUPPORT ORDER, THE PETITIONER SHALL PROMPTLY
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 15 order is issued;

16 (b) enjoining a party from molesting or disturbing the peace of the other party or of any family
 17 member or from stalking, as defined in 45-5-220;

18 (c) excluding a party from the family home or from the home of the other party upon a showing
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25 (3) A person may seek the relief provided for in subsection (2) without filing a petition under this
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5 in the temporary restraining order.

6 (6) At the time of the hearing, the court shall determine whether good cause exists for the
7 injunction to continue for 1 year.

8 (7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court
9 may issue a temporary injunction and an order for temporary maintenance ~~or~~ temporary child support, or
10 temporary family support in amounts and on terms just and proper in the circumstance.

11 (8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

12 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or
13 modification of a final decree under 40-4-208;

14 (b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case
15 of a temporary family support order, upon entry of the decree of dissolution; and

16 (c) when issued under this section, must conspicuously bear the following: "Violation of this order
17 is a criminal offense under 45-5-220 or 45-5-626."

18 (9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence
19 must be withheld except by order of the court for good cause shown."

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